IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos. 9972 to 9975 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESHBHAI GORDHANBHAI & 3 - Petitioner(s)
Versus
SPECIAL/PRINCIPAL & 7 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1 - 4.
DS AFF.NOT FILED (N) for Respondent(s) : 1, 4,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3,5 - 6.
MR MENGDEY, AGP for Respondent(s) : 4,
MR RN SHAH for Respondent(s) : 7,
MR NIRAL R MEHTA for Respondent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 07/08/2006

COMMON ORAL JUDGMENT

1. **Rule**. Mr.Mengdey, learned AGP waives service of

notice of Rule for respondent State, Mr.R.N.Shah, learned Counsel waives service of notice of Rule for Respondent No.7 and Mr.Mehta, learned Counsel appearing for Respondent No.8 waives service of notice of Rule.

2. The petitioners have preferred the petitions for challenging the order passed by the State Government dated 5.4.2006 as well as the earlier order dated 24.5.2005, whereby the orders of the Deputy Collector as well as the Collector were set aside and Entry No.1274 dated 12.12.1985 was ordered to be cancelled.

3. Heard Mr.Trivedi, learned Counsel for the petitioners, Mr.Mengdey, learned AGP for the State Authorities, Mr.R.N.Shah, learned Counsel for Respondent No.7 and Mr.Mehta, learned Counsel for Respondent No.8.

4. Upon hearing the learned Counsel appearing for both the sides, it appears that after some arguments, the learned Counsel appearing for both the sides confirmed the position that Entry No.1274 was entered in the revenue record on 12.12.1985. As per Respondent No.7, in the year

2001 when the petitioners were to deal with the property, public advertisement was given on 13.1.2001. However, it is the case of Respondent No.7 that in spite of the same, the Power-of-Attorney proceeded for execution of sale and consequently Respondent No.7 had to file Civil Suit No.88 of 2003 in the Court of Civil Judge (S.D.), Surat. Since the sale deed was also executed, another Civil Suit No.218 of 2001 was filed by Respondent No.7 for cancellation of the sale deed and Respondent No.8 has filed Civil Suit No.150 of 2004 for cancellation of the Power-of-Attorney as well as the sale deed. So far as Civil Suit No.88 of 2003 is concerned, the case of the petitioners is that the petitioners had moved the application for being impleaded as party in the Suit, however, the consent decree came to be passed by the Civil Court without hearing the petitioners and the said consent decree is challenged by the petitioners by preferring Special Civil Application No.1624 of 2006, which is pending before this Court.

5. It is by now settled that the revenue entries are having value for fiscal purpose. Such entries neither confer any right, nor alters any right in the property, which is otherwise in existence as per the provisions of Transfer of Properties Act or any other relevant law. If entry is mutated and the aggrieved parties have any grievance or aggrieved parties are desired to assert the rights in the property, such rights are to be adjudicated by the competent Civil Court. In the present case, the Civil Suit No.88 of 2003 was already filed and, therefore, considering the facts and circumstances, it appears that the revenue authority could not have cancelled Entry No.1274 dated 12.12.1985, more particularly in view of the facts and circumstances that Respondent No.7, who objected the entry had already preferred Civil Suit No.88 of 2003 against Respondent No.8 for asserting the right over the property. I would have further recorded the reasons, however, the learned Counsel appearing for the petitioners as well as for the private

respondents, Mr.Shah and Mr.Mehta have not invited the reasons and, therefore, suffice it to say that Entry No.1274 dated 12.12.1985 could not have been cancelled by the Revenue Authority and at the most the clarification could have been made that the said entry is subject to the outcome of the proceedings of Civil Suit No.88 of 2003 pending in the Court of Civil Judge, Surat and Special Civil Application No.1642 of 2006 arising therefrom.

6. As in the proceedings of SCA No.1642 of 2006 since this Court is to examine the legality and validity of the consent decree passed in Civil Suit No.88 of 2004, until appropriate orders are passed by this Court in SCA No.1642 of 2006, it may not be necessary for this Court in the present proceedings to examine the legality and validity of Entry No.3926 dated 26.1.2006 since the same was not, in any case, even subject matter before the Secretary of the State Government in the impugned order, which essentially related to Entry No.1274 dated 12.12.1985, the petitioners may pursue the said

matter in the appropriate proceedings of SCA No.1642 of 2006.

7. It appears that against the Entry No.1274 dated 12.12.1985, the Dy. Collector has dismissed the appeal and the Collector had also dismissed the revision. The Secretary of the State Government initially as per the order dated 27.5.2005 (Annexure “B”), without hearing the petitioners had allowed the revision against which the petitioners preferred writ petition being SCA No.24552 of 2005 and this Hon'ble Court (Coram: Akil Kureshi, J.) as per the order dated 26.12.2005 relegated the petitioners to move Secretary once again by pointing out the aforesaid facts of non-joining of the necessary parties. It appears that the petitioners did approach before the Secretary of the State Government and the State Government vide order dated 5.4.2006 allowed the petitioners to be impleaded as parties, but confirmed its earlier order. It appears that based on the earlier order of the State Government Entry No.3671 and No.3874 are mutated in the revenue record and,

therefore, if this Court finds that Entry No.1274 dated 12.12.1985 deserves to be continued in the revenue record, the entries based on the order of the Special Secretary cancelling the Entry No.1274 would not survive, since such entries are only consequential entries.

8. There is also no dispute on the point that other two suits being Civil Suit No.218 of 2004 and No.150 of 2004 are pending in the concerned Civil Court between the parties and the rights of the parties may ultimately be finalized in those civil suits qua sale deed, but as entry based on the sale deed is not the subject matter of this petition, nor was the subject matter before the Secretary of the State Government, it would not be necessary for this Court to make further observations in this regard.

9. Considering the above, the impugned orders of the Secretary of the State Government for cancellation of Entry No.1274 is quashed and set aside. However, it is further directed that Entry No.1274 dated 12.12.1985 shall continue to

remain in the revenue record with the clarification that the said entry is subject to the outcome of the proceedings of Civil Suit No.88 of 2003 and SCA No.1642 of 2006 arising therefrom. Rule made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs. Direct service for Respondent Nos.1 to 6.

7.8.2006 **(Jayant Patel, J.)**

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